

**AMENDMENT CONTRACT #4 TO THE CONTRACT FOR SPECIAL SERVICES
BY MARINE RESEARCH SPECIALISTS FOR ENVIRONMENTAL STUDIES
STANDBY ROSTER**

**EIR PREPARATION ON THE PHILLIPS 66 SANTA MARIA REFINERY RAIL
DEVELOPMENT PLAN / COASTAL DEVELOPMENT PERMIT**

THIS CONTRACT is made and entered into on this ____ day of _____, 20____, by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California [hereafter "County"], through its Environmental Coordinator [hereafter "Coordinator"] and Marine Research Specialists, a California Corporation [hereafter "Consultant"].

WITNESSETH:

WHEREAS, on April 19, 2011, Consultant and County entered into a retainer-type contract with the intention of executing subsequent contract amendments for individual projects as the need arises [hereinafter "Primary Contract"]; and

WHEREAS, the County has authorized the preparation of an Environmental Impact Report for the proposed project identified as Phillips 66 Santa Maria Refinery Rail Development Plan / Coastal Development Permit DRC2012-00095, ED12-201 [hereinafter "Project"], which lies in the County of San Luis Obispo, and is more precisely located on the plat attached hereto as Exhibit "A"; and

WHEREAS, the County shall maintain high quality standards in the application of environmental laws in the County of San Luis Obispo; and

WHEREAS, the project requires an unbiased Environmental Impact Report [hereafter "EIR"], that is prepared in accordance with the California Environmental Quality Act, Public Resources Code, sections 21000 et seq. [hereafter "CEQA"], the State CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. [hereafter "Guidelines"], and the County of San Luis Obispo Environmental Quality Act Guidelines [hereafter "Guidelines"], and that reflects the independent judgment of the County; and

WHEREAS, it is understood that the Consultant shall be the independent contractor of the County to prepare the Project EIR.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements and stipulations set forth herein, the parties agree as follows:

I. PREPARING THE EIR

A. DUTIES OF THE CONSULTANT.

1. It is a fundamental requirement that this EIR be prepared by an unbiased Consultant.
2. To further protect the unbiased EIR requirement, the Consultant agrees that the duties described in this Contract shall be the only work Consultant performs on the Project, unless the Consultant obtains prior written consent from the Coordinator.
3. The Consultant shall make the field exploration, research, tests and analysis necessary to complete an EIR which fulfills the requirements of the EIR content required by CEQA, the Guidelines, and the provisions set forth in Consultant's Scope of Work, [hereafter "scope of work" or Exhibit B]. Exhibit B is attached hereto and incorporated by reference at this point except that the information as to cost and time is attached for informational purposes only.
4. Some factors could severely inhibit or prohibit a proposed project. An objective of conducting an environmental impact study is to identify these factors as soon as possible in order to make a determination regarding the feasibility of whether to continue with the EIR or the project. While conducting the EIR, the Consultant shall diligently watch for and analyze those environmental factors which could inhibit or prohibit the project. If such factors are identified, the Consultant shall immediately notify the Coordinator. The Coordinator will then advise the Consultant in writing on whether to stop work or continue with the EIR.
5. The Consultant shall submit the following documents in multiple copies in phases as described below: (1) a Draft Project Description and EIR Outline, (2) an Administrative Draft EIR, (3) a Draft EIR with an Executive Summary, (4) an Administrative Final EIR with a Mitigation Monitoring and Reporting Program (MMRP)

and (5) a Final EIR with MMRP. Consultant agrees to prepare the documents in compliance with the provisions of CEQA, the Guidelines, and Exhibit B.

a. The Draft Project Description and EIR Outline. Following the preliminary project planning meeting and site visit, the Coordinator will provide the Consultant with a preliminary project description. Within fifteen (15) working days following receipt of the preliminary project description, Consultant shall submit four (4) copies of the draft EIR project description and EIR outline to the Coordinator for review and approval. The Coordinator must approve the draft EIR project description and EIR outline for this phase to be complete. After the Coordinator approves the draft project description and EIR outline, the Consultant may rely on it as a basis for the environmental impact analysis. It is understood that the project description may be further refined from time to time as the EIR study progresses. Any significant changes made to the approved project description may require additional analysis within completed sections of the EIR. The Consultant shall notify the Coordinator of such changes that will result in additional costs. Before incurring additional costs, Consultant shall submit an amended proposal to Coordinator. The Coordinator will advise Consultant whether to continue.

b. The Administrative Draft EIR. The administrative draft EIR is an internal agency document and shall be transmitted only to the Environmental Coordinator, who then may provide it to agencies as needed. Consultant shall not release any part of the administrative draft EIR to the Applicant or other agencies without advance direction from the Coordinator. Seventy five (75) working days after the Scoping Meeting, the Consultant shall submit four (4) unbound copies (3-hole drilled) in 3-ring binders, and one CD (in Word) of an administrative draft EIR with appendices to the Coordinator for agency and staff review and comment. Ten (10) working days after the Coordinator submits comments to the Consultant, Consultant shall incorporate all of the Coordinator's comments and shall submit all changed or new pages showing the revisions to the Coordinator. The administrative draft EIR may be submitted and returned for changes as often as necessary until the Coordinator approves a copy as a complete administrative draft EIR. When the Coordinator notifies Consultant that the Coordinator has approved the administrative draft EIR, this phase is complete. It is

understood that the administrative draft EIR, including any and all changes made to it by the Consultant and/or the Coordinator during this phase, is considered a draft, internal document that is not retained in the ordinary course of business.

c. The Draft EIR with an Executive Summary. The Consultant has ten (10) calendar days from Coordinator's approval of the administrative draft EIR to provide the draft EIR with an Executive Summary, ready for public review. The Consultant shall provide the County with forty-five (45) copies of the Draft EIR with an Executive Summary as follows: five (5) hard copies within appendices (three hole drilled) in three ring binders; fifteen (15) bound copies with appendices (included as a CD in an envelope); twenty-five (25) CDs (with graphics and appendices) in "searchable" PDF format; one (1) electronic version in original format [e.g., Word]; and one (1) electronic version in HTML format or other acceptable web-friendly format for the County website (with easily downloadable sections). Also, unless otherwise specified by the County, a separate CD shall be provided that includes all reference documents cited in the EIR. The Coordinator must approve the draft EIR for this phase to be complete.

d. The Administrative Final EIR with a Mitigation Monitoring and Reporting Program (MMRP). After the comments described in CEQA, and the CEQA Guidelines sections 15086 and 15087 have been collected by the Coordinator, the Coordinator shall transmit these comments to the Consultant. The Consultant shall prepare written responses to these comments in accordance with CEQA and the Guidelines, section 15088. Within twenty (20) working days of receipt of these comments, the Consultant shall provide the County with five (5) copies of the administrative Final EIR and MMRP with appendices as follows: two (2) unbound copies (three hole drilled) in 3-ring binders, two (2) bound copies, and one (1) electronic copy in original format [e.g., Word] for the Coordinator's review, comment and approval. The Coordinator will submit comments to the Consultant. Consultant shall incorporate all of the Coordinator's comments and shall submit all changed or new pages showing the revisions to the Coordinator. The administrative final EIR and MMRP may be submitted and returned for changes as often as necessary until the Coordinator approves a copy as a complete administrative final

EIR and MMRP. When the Coordinator notifies the Consultant that the Coordinator has approved the administrative final EIR and MMRP, this phase is complete.

e. The Final EIR with MMRP.

After the Coordinator approves the administrative final EIR with MMRP, the Consultant shall, within five (5) working days, provide the Coordinator with fifty-five (55) copies of the Final EIR with MMRP as follows: five (5) hard copies with appendices (three hole drilled) in three ring binders; twenty-five (25) bound copies with appendices as CDs in envelopes at back of document; twenty-five (25) CDs (with graphics and appendices) in "searchable" PDF format; one (1) CD in original software format (e.g., Word, Excel, etc.); and fifteen (15) separately bound copies of appendices. Textual information shall be in Word format (as directed by County); spreadsheets and/or databases shall be in Excel format or other format acceptable to County. Computer spreadsheets and graphics generated for use in the EIR shall be formatted for easy use as part of the County's ArcInfo-based geographic information system as follows:

Whenever possible, digitized map data shall be based upon the USGS 7.5 minute quad sheet map series (1:24,000). For registration purposes the locations of the eight (8) latitude/longitude coordinate grid points that represent the four corners and four interior points of the quad map shall be identified. Each distinct data set shall be mapped to a separate layer or theme. All final map data shall be registered to the California State Plane coordinate grid system (NAD83), units being in U.S. feet, and shall be submitted in a .DWG and/or .SHP file format compatible with AutoCAD 2000, ArcView 3.x, or ArcGIS 8.x on CD or DVD media.

A detailed description of all symbolization utilized in the final product shall be included on CD or DVD media. Metadata which meets or exceeds FGDC standards shall also be included on CD or DVD media for all distinct data sets created under this contract.

When the Coordinator notifies Consultant that Coordinator has approved the final EIR, this phase is complete.

B. DUTIES OF THE COUNTY.

1. The Coordinator will be responsible for ensuring that the EIR reflects the independent judgment of the County as the Lead Agency as required by Section 15084(e) of the Guidelines.
2. The Coordinator will make any documents, relevant to the proposed project, in the possession of Coordinator, available to the Consultant.
3. It is understood that repeated revisions to the EIR are costly for the Consultant and the Coordinator. Therefore the Coordinator shall make every effort to reduce the number of iterations of the EIR to a minimum by diligently reviewing each submittal by the Consultant.
4. Coordinator will advise the Consultant whether to continue with the EIR or stop work when situations are identified, such as environmental, economic, technical, legal or other factors, which could inhibit or prohibit the project.
5. The Coordinator will accomplish the tasks required of the Coordinator described in Paragraph I.A. above.
6. Other agencies and the public may make comments to the draft EIR pursuant to CEQA and the Guidelines, sections 15086 and 15087. The Coordinator will make any of these comments which raise environmental points available to the Consultant.
7. The County will provide for payment to the Consultant as provided by the terms of this Contract. The Coordinator will expeditiously review all work submitted by the Consultant in order to assure prompt payment of invoices. At the request of the Consultant, the Coordinator will explain in writing any delay, not the result of the Consultant, that would prevent payment of the invoice within 30 days of receipt by the Coordinator.

C. PAYMENT.

1. County's Maximum Cost of the EIR. The Contract for the preparation of the EIR is a lump sum Contract. It is not a time and materials Contract. The County will pay the Consultant a maximum amount of three hundred eight thousand eighty nine dollars (\$308,089) for a Coordinator-approved, final EIR. The County will pay Consultant in staged payments throughout the performance of the Contract. The sums

due under the timing of these staged payments are tied to products delivered by the Consultant to the Coordinator and approval of such products by the Coordinator.

2. Time of payment. At the request of the Coordinator, the Consultant shall submit itemized statements for work performed on each phase or from the execution of the Contract to the date of the request. The County has the right to verify all work performed on the Contract to date.

a. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, sixty one thousand six hundred seventeen dollars and eighty cents (\$61,617.80), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves four (4) copies of the draft project description and EIR outline. If the Contract is terminated before the Consultant expends twenty percent (20%) of the maximum contract price in billable items, the County is entitled to a refund of the difference between the twenty percent (20%) down payment and an itemized billing amount for the work to termination date based on the rates and schedules in Exhibit B.

b. Consultant will be paid forty percent (40%) of the maximum amount in paragraph I.C.1. above, one hundred twenty three thousand two hundred thirty five dollars and sixty cents (\$123,235.60), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the administrative draft EIR.

c. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, sixty one thousand six hundred seventeen dollars and eighty cents (\$61,617.80), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the draft EIR.

d. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, sixty one thousand six hundred seventeen dollars and eighty cents (\$61,617.80), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the final EIR.

3. Early Termination Payment. If the Contract is terminated prior to the completion of the final EIR for a reason other than breach by the Consultant, the County

will pay Consultant for work performed on the Contract from execution to termination, but not to exceed the maximum percentages listed above for each approved phase plus an amount for work performed in any incomplete phases prior to termination date based on the rates and schedules in Exhibit B. Payment for attendance at meetings and hearings, travel and per diem shall be allocated to the phase in which the travel occurred. If any phase is not completed and the Contract is terminated due to breach by the Consultant, the amount due Consultant shall be the maximum amount of the EIR less the amount required to hire and compensate a replacement Consultant to complete the EIR.

4. Cost Containment. In no event is the Consultant authorized to incur additional costs beyond the maximum amounts in this Contract without prior written agreement signed by the County. Before incurring additional costs or providing additional services, Consultant must inform Coordinator, in writing, of the estimated additional costs. Without prior written approval signed by the County, the County shall not be liable for any amount over the amounts specified herein.

5. Early Payment. For good cause, and in the sole discretion of the County, the County may make such early payments during any phase without terminating this Contract. The Consultant shall preserve the work performed to date and minimize the need to repeat work on the current phase. Before receiving an early payment, the Consultant shall submit an itemized statement showing time and materials spent from execution to date, specifically identifying the work done on the phase in progress and the estimated amounts remaining to complete the phase in progress. In no event shall Consultant be entitled early payment for a future phase. The Board of Supervisors delegates the authority to make early payments to the Environmental Coordinator provided the Environmental Coordinator retains sufficient funds to complete the phase in progress including costs to re-start a delayed phase. The County shall incur no liability for declining to make an early payment.

6. Delegation of County Signatory Authority for Minor Modifications. The Board of Supervisors delegates to the Environmental Coordinator the authority to sign amendments to this Contract that make reasonable modifications to the time

performance or that increase the scope of work and provide additional compensation, provided that all amendments do not total more than twenty percent (20%) of the total lump sum amount stated in paragraph I.C.1 above, or sixty one thousand six hundred seventeen dollars and eighty cents (\$61,617.80). Any amendment beyond that cumulative amount or an amendment pertaining to any performance other than increasing the scope of work, including but not limited to insurance, indemnity, property and other provisions in this Contract must be in writing and signed by the Board of Supervisors. These additional funds are intended to provide for flexibility needed to respond to changes generated in writing by the County; not by the Consultant. Any modification to the Contract within the scope of this paragraph need only be signed by the Consultant and the Coordinator.

II. PROJECT MEETINGS AND PUBLIC HEARINGS

This section of the Contract, Section II, "Project Meetings and Public Hearings" is an option to be exercised solely at the discretion of the Coordinator.

A. NUMBER OF MEETINGS AND HEARINGS.

At the Coordinator's request, Consultant will send appropriate representatives to up to four (4) project meetings and four (4) public hearings. The consultant will provide attendance of two representatives at weekly conference calls with the County.

B. PAYMENT CALCULATIONS.

1. Attendance at project meetings and conference calls. The Consultant shall be paid for the time spent by Consultant's representatives in preparing for and attending the project staff meetings and conference calls. The Consultant shall submit an itemized billing for each meeting attended. For preparation and attendance at such meetings, Consultant's staff will be paid at the hourly rates as provided in Exhibit B. The total maximum compensation for preparation, attendance and participation of all of Consultant's representatives in all meetings on the project is forty one thousand five hundred eighty eight dollars (\$41,588). This is in addition to the amount stated in paragraph I.C.1. above.

2. Attendance at hearings. The Consultant shall be paid for the time spent by Consultant's representatives in preparing for and attending the public hearings. The Consultant shall submit an itemized billing for each public hearing attended. The Consultant shall be paid for preparation and attendance at such hearings, at the hourly rates as provided in Exhibit B. The total maximum for preparation, attendance and participation of all of Consultant's representatives in all (up to 4) public hearings on the project and appeal, if any, is fourteen thousand twenty five dollars (\$14,025). This is in addition to the amount stated in paragraph I.C.1. above.

III. PROPOSED FINDINGS

This section of the Contract, Section III, "Proposed Findings," is an option to be exercised solely at the discretion of the Coordinator.

A. DUTIES FOR FINDINGS.

At the Coordinator's request, Consultant shall prepare and deliver to Coordinator, two (2) unbound copies of proposed findings for use by the Board of Supervisors. The findings shall be prepared in accordance with the requirements of the Guidelines, sections 15091 and 15093. The Coordinator will notify Consultant of a reasonable due date for the proposed findings. The Coordinator must approve the proposed findings for this performance to be complete. Findings shall also be provided to the County electronically in the original format, such as in Word (County's latest version); any spreadsheets and/or databases developed for these findings shall also be provided electronically in the original format, such as in Excel or other County-approved format.

B. PAYMENT FOR FINDINGS.

County shall pay Consultant on a time and materials basis for preparing proposed Findings, up to a total maximum amount of three thousand six hundred nineteen dollars (\$3,619) for Coordinator-approved proposed findings. Consultant will submit an itemized statement. The Consultant shall be paid for preparation of such findings, at the hourly rates as provided in Exhibit B. Payment will be due thirty (30) days after approval of proposed findings and receipt of Consultant's correct invoice.

Payment for findings is in addition to the amounts stated in paragraphs I.C.1. and II.B above.

IV. ADJUSTMENTS TO PAYMENTS

At the Coordinator's discretion, the Coordinator may increase or decrease the maximum amount paid to the Consultant for each of the tasks in Sections I.C.1, I.C.6, II.B.1, II.B.2, and III.B above, provided that the total amount paid to the Consultant for all of the tasks in Sections I.C.1, I.C.6, II.B.1, II.B.2, III.B above, shall not exceed a maximum amount of four hundred twenty eight thousand nine hundred thirty eight dollars and eighty cents (\$428,938.80) and shall be paid at the hourly rates specified in Exhibit B.

V. AMENDMENT TO SECTION III.O (COPYRIGHT) OF PRIMARY CONTRACT

Section III, subsection O (Copyright) of the Primary Contract is hereby amended and replaced in its entirety to read as follows:

O. COPYRIGHT.

Any reports, maps, documents or other materials produced in whole or part by the Consultant or any subconsultant or person responsible to the Consultant under this Contract shall not be subject to an application for copyright by or on behalf of Consultant, subconsultant or person responsible to Consultant during the performance of this Contract.

VI. AMENDMENT TO SECTION III.R (ACCESS TO RECORDS AND FINANCIAL DATA) OF PRIMARY CONTRACT

Section III, subsection R (Access to Records and Financial Data) of the Primary Contract is hereby amended and replaced in its entirety to read as follows:

R. ACCESS TO RECORDS AND FINANCIAL DATA.

At the request of the Board of Supervisors, the Coordinator, the County Planning Director, the County Counsel, the County Administrator or the County Auditor, the County's agents or employees have a right to access any recorded

data, preserved in any form, including but not limited to materials generated for this project or existing information compiled for this project and any financial documents pertaining to this project, wherever located during reasonable hours for up to three years after project approval. After three years, if the Consultant wants to dispose of the background records the Consultant shall give the County the option of taking possession of the records. The County's right to access includes the right to make copies of such information.

VII. AMENDMENT TO SECTION III.C (INDEMNIFICATION) OF PRIMARY CONTRACT

Section III, subsection C (Indemnification) of the Primary Contract is hereby amended and replaced in its entirety to read as follows:

C. INDEMNIFICATION.

To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless the County, its officers, agents, and employees from all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement to the extent caused by the negligent performance or attempted performance of the provisions hereof, including any willful or negligent act or omission to act on the part of the Consultant or his agents or employees or independent contractors. This indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County.

VIII. GENERAL CONDITIONS

All other provisions of the Primary Contract not specifically altered by this Contract remain in full force and effect and are incorporated herein by reference.

CONSULTANT

MARINE RESEARCH SPECIALISTS
A California Corporation

By: 
John F. Peirson, Jr., Principal

June 28, 2013
Date

By: 
Douglas A. Coats, Vice President

6/29/13
Date

COUNTY OF SAN LUIS OBISPO

By: _____
Chairman of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

Date

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: 7/1/13

Attachments

Exhibit A – Location Map
Exhibit B – Consultant Work Scope/ Hourly Rates